

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 22-CV-00115
)	
vs.)	
)	
TWENTY-EIGHT THOUSAND TWO)	
HUNDRED AND SEVENTY DOLLARS)	
(\$28,270) IN UNITED STATES)	
CURRENCY, AND ONE HUNDRED)	
THIRTY THOUSAND DOLLARS)	
(\$130,000) IN UNITED STATES)	
CURRENCY,)	
)	
Defendants.)	

VERIFIED COMPLAINT OF FORFEITURE *IN REM*

COMES NOW, plaintiff, United States of America, by and through its attorneys, Timothy T. Duax, United States Attorney, and Martin J. McLaughlin, Assistant United States Attorney, and respectfully state as follows:

1. This is a civil action in rem brought to enforce the provisions of Title 21, United States Code, Section 881 for the forfeiture of all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of 21 U.S.C, § 841 et al., all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of 21 U.S.C, § 841 et al., in violation of Title 21, United States Code, Section 841(a)(1), and 841(b)(1)(B).

2. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 1345 and 1355. Pursuant to 28 U.S.C. § 1355(b)(1)(A), jurisdiction in this matter is founded in that the acts or omissions giving rise to forfeiture occurred in the Northern District of Iowa.

3. The defendant property is described as:

Twenty-Eight Thousand Two Hundred Seventy Dollars (\$28,270.00) in United States currency seized from Kain Allen Cortez on or about January 18, 2022, in North Liberty, Iowa,

And

One Hundred Thirty Thousand Dollars (\$130,000.00) in United States currency seized from Nichole Marie Messerschmitt on or about January 18, 2022, in Shellsburg, Iowa.

4. State of Iowa search warrants were obtained on January 18, 2022, for two residences associated with Kain Allen Cortez in North Liberty, Iowa, and Nichole Marie Messerschmitt in Shellsburg, Iowa, believed to be Cortez's and Messerschmitt's residence. Nichole Messerschmitt is Kain Allen Cortez's mother.

5. Law enforcement officers conducted search warrants at two residences associated with Cortez in North Liberty, Iowa, and Messerschmitt in Shellsburg, Iowa on January 18, 2022, and recovered \$28,270.00 and \$130,000.00 in United States Currency.

6. An administrative forfeiture was commenced by the Federal Bureau of Investigation (FBI) on the \$28,270.00 and the \$130,000.00 in US currency.

7. On or about April 24, 2022, Terry Howard filed a claim to the \$28,270.00 and \$130,000,000 in US currency causing the FBI to refer the forfeiture to the U.S. Attorney's Office for the Northern District of Iowa to commence a judicial forfeiture action. From the claims made by Howard in his claim filed with the FBI, it appears Howard has no interest in the actual drug proceeds but rather asserted a general claim that the United States government owes him money based on other circumstances unrelated to this case.

8. The facts and circumstances supporting the seizure and forfeiture of the currency are contained in Exhibit 1, (Affidavit of FBI SFO John J. Austin) attached hereto and incorporated herein by reference.

9. The United States alleges the defendant property represents money furnished or intended to be furnished in exchange for a controlled substance, proceeds traceable to such an exchange, and/or money used to facilitate the sale of controlled substances, in violation of Title 21, United States Code, Section 841(a)(1), and is, therefore subject to forfeiture to the United States of America pursuant to Title 21, United States Code, Section 881(a)(6).

Title 21, United States Code § 841 provides:

(a)(1) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Title 21, United States Code § 881 provides:

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

WHEREFORE, the United States of America prays:

- (1) process of warrant *in rem* issue for the arrest of the defendant property;
- (2) due notice be given to all parties to appear and show cause why the forfeiture should not be decreed;
- (3) judgment be entered declaring the defendant property be forfeited to the United States of America for disposition according to the law; and
- (4) the United States of America be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted,

TIMOTHY T. DUAX
United States Attorney

By: /s/ Martin J. McLaughlin

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DECLARATION

I, John J. Austin, am a Special Agent (SA) with the Iowa Department of Public Safety; Division of Narcotics Enforcement and a duly sworn Special Federal Officer (SFO) with the Federal Bureau of Investigation (FBI), and the officer assigned the responsibility for this case.

I have read the contents of the foregoing complaint for forfeiture, and the exhibits thereto, and the statements contained therein are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 26 day of September, 2022.



John J. Austin, Special Federal Officer
Federal Bureau of Investigation (FBI)